

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MOBILE EQUITY CORP., §
§
Plaintiff, §
§
v. § Case No. 2:21-cv-00126-JRG-RSP
§
WALMART INC., §
§
Defendant. §

REPORT AND RECOMMENDATIONS

Before the Court is the Motion for Summary Judgment that Certain References Qualify as Statutory Prior Art filed by Defendant Walmart Inc. **Dkt. No. 205.** Walmart moves the Court to qualify various references as prior art under pre-AIA 35 U.S.C. § 102. The references under consideration are: (1) U.S. Patent No. 8,332,323, (2) U.S. Patent Application Publication 2016/0275478A1, (3) Eurasian Patent EA 008185B1, (4) U.S. Patent Application Publication 2003/0055675A1, (5) U.S. Patent Application Publication 2002/0073027A1, (6) U.S. Patent No. 8,238,828, (7) DeGennaro, “Merchant Acquirers and Payment Card Processors: A Look inside the Black Box,” Federal Reserve Bank of Atlanta, Economic Review First Quarter 2006, (8) Dou, “Creative Use of QR Codes in Consumer Communication,” International Journal of Mobile Marketing, Vol. 3, No. 2, and (9) Rinearson, “Electronic Payments: The Next New Thing: Mobile Payments,” J. Payment Sys. Law, Vol. 3, No. 1.

During the hearing, Walmart withdrew the motion as to references 4-9 above. As to the remaining references, there does not appear to be a dispute between the parties as to whether they qualify under the statute. However, the Court finds that this is not the proper procedural vehicle for the relief sought. Therefore, the Court recommends that Walmart’s motion be **DENIED.** The matter will be further addressed at the exhibit hearing.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this report within 14 days bars that party from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc). Any objection to this Report and Recommendation must be filed in ECF under the event "Objection to Report and Recommendations [cv, respoth]" or it may not be considered by the District Judge.

SIGNED this 29th day of September, 2022.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE